

DEPARTMENT OF STATE REVENUE

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**LETTER OF FINDINGS NUMBER: 97-0569
CLAIM FOR REFUND — SALES/USE TAX
FOR TAX YEAR 1996**

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ISSUE

I. Sales/Use Tax — Safety Equipment

Authority: 45 IAC 2.2-5-8(c); U.S. Steel Corporation (1981), Ind. App., 425 N.E.2d 659

Taxpayer protests the denial of the claim for refund of sales taxes paid on earplugs.

STATEMENT OF FACTS

Taxpayer is a steel foundry that manufactures components for large equipment and varied shapes and sizes of valves. All components are manufactured through a molding process. Taxpayer utilizes several procedures to complete the molding/casting process. In the grinding area, power equipment is used to grind rough edges and seams. In the flame wash process, arc welders remove any defects or flaws. The blast washing process is performed by using high-powered guns to shoot a steady spray of small steel pellets against the casting to remove rough edges and burrs. Employees in all production areas wear safety equipment. This equipment includes face shields, aprons, gloves, respirators, and earplugs. Taxpayer claims a refund for sales/use tax paid on earplugs. Additional facts will be provided below, as necessary.

I. Sales/Use Tax — Safety Equipment

DISCUSSION

Taxpayer claims earplugs are worn by its employees for the sole purpose of preventing hearing damage or loss due to the extreme noise levels created by the production equipment. Taxpayer cites Department Regulation 45 IAC 2.2-5-8(c) which exempts from sales tax any equipment "directly used in the production process; i.e., they have an immediate effect on the article being produced." Section (c) goes on to state, "property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process..." The section further provides examples of exempt equipment. Taxpayer argues 45 IAC 2.2-5-8(c)(2)(F) exempts earplugs from sales tax. 45 IAC 2.2-5-8(c)(2)(F) states:

Safety clothing or equipment which is required to allow a worker to participate in the production process *without injury* or to prevent contamination of the product during production. Emphasis added.

Taxpayer argues its employees, without earplugs, could not participate in the production process without injury. Taxpayer provides an article explaining OSHA's limits for exposure to noise. OSHA's "Action Level" for eight hour noise exposure is 85 decibels. Taxpayer states the measured decibel levels in its production areas surpass 90. Taxpayer also points out its employees usually work ten hour shifts so they would be exposed to an even greater risk.

Taxpayer next cites U.S. Steel Corporation (1981), Ind. App., 425 N.E.2d 659, which found personal protective equipment "passed beyond the mere function of protecting the worker to become an intimate part of production itself." The equipment at issue in U.S. Steel included goggles, masks, hoods, gloves, aprons, etc. The court found the purpose of the personal protective equipment was to make production (of steel) possible given the extreme temperatures, gaseous fumes, and intense light and noise. Taxpayer argues the purpose of the earplugs are comparable to the personal protective equipment addressed in U.S. Steel.

Taxpayer claims all earplugs at issue were worn by employees engaged in the production process. Taxpayer submitted a listing of the date and amount of earplug purchases.

FINDING

Taxpayer's protest is sustained. Taxpayer has sufficiently proven earplugs were necessary for employees to participate in the production process without injury.